

Before the  
Administrative Hearing Commission  
State of Missouri



CLAYTON McCARTHY,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF  
INSURANCE, FINANCIAL INSTITUTIONS  
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 13-0951 DI

**DECISION**

We dismiss Clayton McCarthy's complaint because we lack jurisdiction to hear it.

**Procedure**

On May 29, 2013, McCarthy filed a complaint with this Commission. On July 2, 2013, the Director of the Department of Insurance, Financial Institutions and Professional Registration ("the Director") filed a motion for summary decision seeking dismissal of McCarthy's complaint for lack of jurisdiction. We gave McCarthy until July 22, 2013, to respond to the motion, but he failed to do so.

We make our findings of fact from McCarthy's complaint and the certified copies of documents appended to the Director's motion, which are certified copies of the Director's records. The following facts, based upon that evidence, are undisputed.

## Findings of Fact

1. On April 24, 2013, the Director issued his refusal to issue an MVESC<sup>1</sup> insurance producer license to McCarthy (“refusal”).
2. On April 26, 2013, the Director served the above-referenced refusal on McCarthy by certified mail.
3. The notice accompanying the refusal informed McCarthy that he may file a complaint with this Commission, P.O. Box 1557, Jefferson City, Missouri.
4. On May 29, 2013, McCarthy filed the complaint in this case with this Commission by certified mail.
5. Thirty days after April 26, 2013 was May 26, 2013, which was a Sunday.
6. May 27, 2013 was Memorial Day, a State holiday.

## Conclusions of Law

We do not have jurisdiction to hear McCarthy’s complaint because he failed to file the complaint within thirty days after the Director mailed him notice of the refusal by certified mail.

Section 621.120<sup>2</sup> provides:

Upon refusal by any agency listed in section 621.045 to permit an applicant to be examined upon his qualifications for licensure or upon refusal of such agency to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination, such applicant may file, **within thirty days after the delivery or mailing by certified mail of written notice of such refusal to the applicant**, a complaint with the administrative hearing commission. . . .

(Emphasis added.)

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<sup>1</sup> Motor Vehicle Extended Service Contract.

<sup>2</sup>Unless otherwise noted, statutory references are to RSMo 2000.

We determine the date when McCarthy filed his complaint according to § 621.205, which provides:

1. For the purpose of determining whether documents are filed within the time allowed by law, documents **transmitted to the administrative hearing commission by registered mail or certified mail** shall be deemed filed with the administrative hearing commission as of the date shown on the United States post office records of such registration or certification and mailing. If the document is sent by any method other than registered mail or certified mail, the administrative hearing commission shall deem it to be filed on the date the administrative hearing commission receives it.

(Emphasis added.) McCarthy mailed his complaint by certified mail on May 29, 2013.

Therefore, the complaint is deemed filed on that day. The last day for timely filing would have been May 28, 2013.

Failure to comply with statutory time limitations for appeal from an administrative agency decision results in the lapse of subject matter jurisdiction and the loss of right of appeal.<sup>3</sup> We cannot decide claims filed outside the statutory time limit;<sup>4</sup> we can only exercise our inherent power to dismiss the complaint for lack of jurisdiction.<sup>5</sup>

### Summary

We grant the Director's motion and dismiss McCarthy's complaint because we do not have jurisdiction to hear it.

SO ORDERED on July 25, 2013.

/s/ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>3</sup>*Daly v. Warner-Jenkison Mfg. Co.*, 92 S.W.3d 319, 322-23 (Mo. App., E.D. 2002) (citing *Fayette No. 1, Inc. v. Missouri Dep't of Soc. Servs.*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1992)).

<sup>4</sup>*Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1983).

<sup>5</sup>*Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).